

Nevada Public Records Act (NPRA) and Legal Overview

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Public Records Act and Open Meeting Law: An Open Forum for
State Agencies

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Nevada Public Records Act (NPRA)

- * Codified in NRS Chapter 239.
- * General framework to use when handling public record requests.
 - * General requirements, and
 - * Potential risks of improperly denying a records request.

General Premise of NPRA

- * All state agency records are public unless declared confidential by law. NRS 239.010.
- * Under the NPRA, open government is the rule.

General Premise of NPRA

- * All public books and public records of governmental entities must remain open to the public unless otherwise declared confidential by law. NRS 239.010(1).
- * Many confidentiality provisions now specified in NRS 239.010(1) plus catch-all phrase: “and unless otherwise declared by law to be confidential.”
- * Confidentiality provisions from the NAC are not included, but still have the force and effect of law and should be included in the “catch-all” in NRS 239.010(1).
- * “A properly adopted substantive rule establishes a standard of conduct which has the force of law.” *State ex rel. Tax Comm’n v. Safeway*, 99 Nev. 626, 630, 668 P.2d 291, 294 (1983).

Court Decisions

- * *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990).
- * *DR Partners v. Bd. of County Comm'rs*, 116 Nev. 616, 6 P.3d 465 (2000).
- * *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 63 P.3d 1147 (2003).
- * *Reno Newspapers v. Sheriff*, 234 P.3d 922, 126 Nev. Adv. Op. 23 (July 1, 2010).
- * *Reno Newspapers, Inc. v. Jim Gibbons, Governor of the State of Nevada*, 266 P.3d 623, 127 Nev. Adv. Op. 79 (Dec. 15, 2011).
- * *Civil Rights for Seniors v. Administrative Office of the Courts*, 313 P.3d 216, 129 Nev. Adv. Op. 80 (Oct. 31, 2013).
- * *Public Employees' Retirement System of Nevada v. Reno Newspapers, Inc.*, 313 P.3d 221, 129 Nev. Adv. Op. 88 (Nov. 14, 2013).
- * *Las Vegas Metropolitan Police Department v. Blackjack Bonding, Inc.*, 343 P.3d 608, 131 Nev., Adv. Op. 10 (March 5, 2015).
- * *City of Sparks v. Reno Newspapers*, 399 P.3d 352 (Aug. 3, 2017).
- * *Comstock Residents Association v. Lyon County Board of Commissioners*, 134 Nev. Adv. Op. 19, 414 P.3d 318 (2018).
- * *Clark County School District v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 84, 429 P.3d 313 (2018).

General Premise of NPRA

- * The NPRA favors transparency in government and open access to governmental entity records, and the provisions of the NPRA must be construed liberally in order to maximize the public's right of access to government records. *Reno Newspapers, Inc. v. Jim Gibbons, Governor of the State of Nevada*, 127 Nev. Adv. Op. 79, at 5 (2011).
- * “The Legislature has declared that the purpose of the NPRA is to further the democratic ideal of an accountable government by ensuring that public records are broadly accessible.” *Gibbons*, 127 Nev. Adv. Op. 79, at 5 (2011) (citing NRS 239.001(1)).

Donrey of Nevada v. Bradshaw (1990)

- * Balancing test articulated by the Court, Court later refers to it as *Bradshaw* balancing test
 - * Used by government entities to determine whether there is an exception to the Nevada Public Records Act (NPRA) that justifies the withholding of a requested record.
 - * This test involves balancing the governmental entity's public policy interest in withholding the document against the general policy in favor of open government.

Public Policy Concerns Acknowledged by *Bradshaw*

- * Pending or anticipated criminal proceeding,
- * Confidential sources or investigative techniques to protect,
- * Possibility of denying someone a fair trial, and
- * Jeopardy to law enforcement personnel.

DR Partners v. Bd. of County Comm'rs (2000)

- * The Court determined whether the deliberative process privilege applied to the requested records.
- * The Court held that “when the requested record is not explicitly made confidential by a statute, the balancing test in *Bradshaw* **must** be employed.”
- * Thus, *Bradshaw* balancing test is not optional, if a governmental entity is withholding a requested record that is not specifically declared confidential by law.

Access to Public Records = a “Fundamental Right”?

- * In *DR Partners*, the Court said any limitation on the general disclosure requirements of NRS 239.010 must be based upon a balancing or “weighing” of the governmental entity’s interests in non-disclosure against the general policy in favor of open government and the requestor’s “fundamental right” to access public records.

DR Partners (cont.)

- * For the deliberative process to apply and allow a governmental entity to withhold requested records, the records must be “predecisional” and “deliberative.”
- * After conducting the *Bradshaw* balancing test, the burden is upon the governmental entity to explain why the records requested should not be furnished, with specific evidence justifying the withholding of the records.

City of Reno v. Reno Gazette-Journal (2003)

- * The question in this case was whether Reno Transportation Rail Access Corridor Project (ReTRAC) records requested by the Reno Gazette Journal were confidential.
- * ReTRAC is classified as a federal highway project and part of funding for the project came from federal sources.
- * 49 C.F.R. § 24.9(b) provides that records maintained by a governmental entity as part of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are “confidential regarding their use as public information, unless applicable law provides otherwise.”

City of Reno v. Reno Gazette-Journal (cont.)

- * The Court interpreted the regulation according to its plain meaning and stated “the regulation plainly makes records involved in acquisition of real property for federally funded programs confidential, and not public information, unless there is a law providing that they are not confidential.”
- * The NPRA is not “applicable law” changing the confidential nature of these records because it is a provision of general applicability and the NPRA does not specifically state that “records regarding acquisition of property are public.”
- * “Under 49 C.F.R. § 24.9(b), the records in question are confidential. They are therefore exempt from the Nevada Public Records Act.”

Reno Newspapers v. Sheriff (2010)

- * The 2007 legislative amendments affected the *Bradshaw* balancing test.
 - * Now, a narrower interpretation of private or governmental interests promoting nondisclosure to be weighed against the policy for an open and accessible government.
- * “A mere assertion of possible endangerment does not clearly outweigh the public interest in access to . . . records.”

Reno Newspapers v. Sheriff (cont.)

- * The Court held that the identity of a holder of a concealed firearms permit and records of any post-permit investigations, suspensions, or revocations of such permits are public records subject to disclosure and that any confidential information in the records should be redacted before disclosure.
- * Rule: Whenever possible, redact and provide.

Confidential Information

- * One rather extensive definition is found in criminal statutes, under unlawful acts regarding personal identifying information. NRS 205.4617.
- * Includes current or former name, **driver's license number**, identification card number, **social security number**, checking account number, savings account number, credit card number, debit card number, financial services account number, **date of birth**, **place of employment**, maiden name of the mother of a person, **unique biometric data**, electronic signature, personal identification number or password, alien registration number, **number of any professional, occupational, recreational or government license, certificate or permit**, medical treatment code related to clinical trial, **utility account number of a person**.

Confidential Information (cont.)

- * Another definition of confidential information is found in NRS 603A.040.
- * These definition may not be exhaustive. Check your agency statutes!
 - * Example: Some agencies have statutes indicating that a person's home address is confidential. See NRS 644.130(2)(b).

Reno Newspapers v. Sheriff (cont.)

- * The Court indicated that the governmental entity's burden is to prove its interest in nondisclosure "clearly" outweighs the public's right to access, and the governmental entity cannot meet this burden with hypothetical concerns.

Reno Newspapers, Inc. v. Jim Gibbons, Governor (2011)

- * Internal governmental entity policies that do not have the force and effect of law do not constitute specific authority justifying withholding the requested record under the NPRA.
- * The governmental entity *generally* must provide a log to the requestor describing each individual withheld record. *Gibbons*, 127 Nev. Adv. Op. at 12.
- * The governmental entity may be exempt from providing a log to the requestor if the governmental entity can demonstrate that the requestor has sufficient information to meaningfully contest the claim of confidentiality without a log.

Withheld Records Log

- * This log should contain “a general factual description of each record withheld and a specific explanation for nondisclosure.” *Gibbons*, 127 Nev. Adv. Op. at 13.
- * The explanation should include specific authority supporting the nondisclosure of the record and a reason why this authority supports the governmental entity’s claim of confidentiality. “[A] string of citations to a boilerplate declaration of confidentiality” does not satisfy the governmental entity’s requirements under the NPRA. *Gibbons*, 172 Nev. Adv. Op. at 16 (citing NRS 239.0107(1)(d)(2)).

Withheld Records Log (cont.)

- * A possible format for a log when a governmental entity withholds requested records may be found in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), although the Nevada Supreme Court has not adopted or required such a format in Nevada, and this format may not be appropriate in every case.

Civil Rights for Seniors v. AOC (2013)

- * Arguments were made as to whether or not the judiciary and, specifically the Administrative Office of the Courts (AOC), is a “governmental entity” as defined in NRS Chapter 239. The Court declined to address this question.
- * Instead, the Court held that the requested records related to Nevada’s Foreclosure Mediation Program (FMP) were confidential pursuant to the Foreclosure Mediation Rules (FMR).
 - * These rules were enacted by the Court under power delegated by the Legislature under NRS 107.086(8)(d) and under the Court’s “inherent power to provide for the efficient administration of justice.”
 - * The requested documents are “confidential according to FMR 7 and FMR 19, and thus are confidential as a matter of law.”

Civil Rights for Seniors v. AOC (cont.)

- * The Court further held that “the requested records are not maintained in connection with a judicial proceeding. Indeed, the FMP process is complete before, and often in lieu of, the initiation of a proceeding in any court. Thus, the requested records are not court records subject to disclosure pursuant to SRCR 1(3).”
- * “[T]he AOC’s interest in maintaining the confidentiality of participant information is justified, given the personal and sensitive nature of the information involved. . . . To hold otherwise would expose highly sensitive personal and financial information to the public and thus have a chilling effect on open and candid FMP participation, undermining the Legislature’s interest in promoting mediation.”
- * The Court also recognized “the judiciary’s inherent authority to manage its own affairs.”

PERS of Nevada v. Reno Newspapers, Inc. (2013)

- * The Court “begins its analysis of claims of confidentiality under the [NPRRA] with a presumption in favor of disclosure.”
- * “The state entity bears the burden of overcoming this presumption of openness by proving by a preponderance of the evidence that the requested records are confidential.”
- * “The state entity may either show that a statutory provision declares the record confidential, or, in the absence of such a provision, ‘that its interest in nondisclosure clearly outweighs the public’s interest in access.’” (quoting *Gibbons*, 266 P.3d at 628).

PERS of Nevada v. Reno Newspapers, Inc. (cont.)

- * NRS 286.110(3) states that “[t]he official correspondence and records, other than the files of individual members or retired employees, and, except as otherwise provided in NRS 241.035, the minutes, audio recordings, transcripts and books of the System are public records and are available for public inspection.” (emphasis added).
- * “This exception to disclosure must be construed narrowly.” See NRS 239.001(3).

PERS of Nevada v. Reno Newspapers, Inc. (cont.)

- * Therefore, the Court held:
 - * “NRS 286.110(3)’s scope of confidentiality does not extend to all information by virtue of it being contained in individuals’ files. Where information is contained in a medium separate from individuals’ files, including administrative reports generated from data contained in individuals’ files, information in such reports or other media is not confidential merely because the same information is also contained in individuals’ files. Rather, it is the individuals’ files themselves that are confidential pursuant to NRS 286.110(3).”

PERS of Nevada v. Reno Newspapers, Inc. (cont.)

- * While NRS 286.100(3) protects only the individuals' files maintained by PERS, “other statutes, rules, or case law may independently declare individuals' information confidential, privileged, or otherwise protected.”
- * In such a situation, the Court “must review the requested information in camera to ensure that appropriate confidentiality is maintained.”

PERS of Nevada v. Reno Newspapers, Inc. (cont.)

- * PERS raised concerns regarding identity theft and elder abuse in releasing the records requested.
 - * Provided statistics indicating that Nevada is the third leading state in the number of fraud complaints to the Federal Trade Commission and the sixth leading state in the number of identity theft complaints.
- * The Court stated “[b]ecause PERS failed to present evidence to support its position that disclosure of the requested information would actually cause harm to retired employees or even increase the risk of harm, the record indicates that their concerns were merely hypothetical and speculative.”
 - * Thus, the district court correctly balanced the interests involved in favor of disclosure.

A Duty to Create Requested Records?

- * The Court's holding does not require a government agency to search through multiple files to create and compile a new record in response to a public records request, even if the data or information needed to create that document is already owned or maintained by the governmental entity. *PERS*, 129 Nev. Advance Opinion 88, at 9-10.
- * This question is not completely answered, but clarified more fully in March 2015 in *LVMPD v. Blackjack Gaming*.

A Duty to Create Requested Records? (cont.)

- * “[T]o the extent that the district court ordered PERS to create new documents or customized reports by searching for and compiling information from individuals’ files or other records, we vacate the district court’s order.” *PERS*, 129 Nev. Advance Opinion 88, at 9.
 - * The *PERS* Court cites to NRS 239.010(1) (permitting “inspection” and copying by the public); NRS 239.055(1) (permitting a government entity to charge an addition fee for extraordinary resources necessary to comply with ‘a request for a copy of a public record’ (emphasis added)). *PERS*, 129 Nev. Advance Opinion 88, at 9.
 - * The *PERS* Court also cites to *State ex rel. Kerner v. State Teachers Ret. Bd.*, 695 N.E.2d 256, 258 (Ohio 1998) (concluding Ohio public records laws impose “not duty to create a new document by searching for and compiling information from [a government agency’s] existing records”). *PERS*, 129 Nev. Advance Opinion 88, at 9-10.

To Create or Not to Create?

- * *Las Vegas Metropolitan Police Department v. Blackjack Bonding, Inc.*, 343 P.3d 608, 131 Nev., Adv. Op. 10 (March 5, 2015).
- * **In *PERS*, this court did not approve of the agency having to “search[] for and compil[e] information from individuals’ files or other records.”** 129 Nev. at ———, 313 P.3d at 225.
- * *PERS* did not address the situation where an agency had technology to readily compile the requested information. See *id.* Instead, **when an agency has a computer program that can readily compile the requested information, the agency is not excused from its duty to produce and disclose that information.** See *State, ex rel. Scanlon v. Deters*, 45 Ohio St.3d 376, 544 N.E.2d 680, 683 (1989), overruled on other grounds by *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83, 89 (1994).

Attorney General Opinions

- * There are many and most are older and provide the same framework as the case law, which now controls.
- * Unpublished letter AGO that states that drafts are not public records.
 - * Coincides with definition in NAC 239.705, definition of “official state record.” No obligation to keep drafts under retention schedule. See NAC 239.711.
- * If you have questions about an Attorney General Opinion on public records, please ask your assigned Deputy AG or other legal counsel.
- * You can search Attorney General Opinions at ag.nv.gov

Attorney General Opinion Requests

- * If you have a specific public records question that is not addressed in the statutes or case law and you want an Attorney General Opinion, please talk to your assigned Deputy AG or legal counsel and consider making the request.

General Tips and Reminders

- * Written Response Required Unless Readily Available
 - * An agency must respond in writing to records requests by not later than the end of the fifth business day after the request is received. NRS 239.0107(1).
 - * Options are (1) provide copy, (2) allow inspection, (3) it is confidential, and (4) we need more time, and (5) do not have it.
 - * If a public book or record is readily available, in lieu of a written response the agency shall allow the requestor to inspect or copy or receive a copy of the record.
- * **Best Practice:** Put procedures in place now to ensure that public records requests are handled within the time period required in order to avoid any future problems.

Verbal Records Requests

- * Please note that the NPRA allows both written and oral public records requests. NRS 239.0107(1). Thus, it is important to ensure that the agency has appropriate procedures in place such that oral requests for records are logged and/or handled appropriately under the NPRA.

Extraordinary Requests **MUST** be in writing.

- * Pursuant to recent changes in the 2013 session, all extraordinary requests must be in writing. See NRS 239.055.
- * The law does not allow us to MANDATE use of a specific form, but the law does require that each agency has a form for public records requests.
- * What is an “extraordinary” request?
 - * It depends. See NSLAPR Bulletin No. 3 available at www.nsla.nv.gov.
- * Non-extraordinary requests may be oral and may not be ignored or required to be submitted in writing.

Legal Custody ≠ Ownership

- * Possession of a records may not equal Legal Custody.
- * Legal custody is defined in NAC 239.041 and means:
 - * “all rights and responsibilities of access to and maintenance of a records which are vested in a state agency and **with the head of the state agency charged with the care, custody and control of that record.**”
 - * This definition used to include that the term “does not include the ownership of the record.”
 - * Why?
 - * Having a copy may not be the same as having legal custody.
 - * Under NRS 239.0107(1), obligation is to provide access ONLY to records your agency has legal custody or control over.

Where Is It?

- * If the record is not in the legal custody of the agency, the agency must provide the requestor with written notice of that fact and provide the name and address of the government agency that has custody of the record, if known.
- * If it has been destroyed or transferred to State Archives pursuant to records retention schedule, inform requestor.
- * If another agency has it and have the information, you have a duty to let the requester know. See NRS 239.0107(1)(b).
- * If state records are on a personal device, they should be provided to the state for retention and made available for inspection/request by the public.

Verbal Discussions to Clarify or Discuss Request

- * Agencies may have a verbal discussion with the requestor about the records request to clarify or otherwise discuss the request. However, the final notification pursuant to NRS 239.0107(1) about the status of the record **must** be in writing. The agency should keep a copy of this notification for its records.
- * The agency should document in writing, e.g., by letter to the requestor, any verbal discussions that it has with the requestor that clarify, narrow, or otherwise alter the original records request.

Recovering Actual Costs

- * An agency may recover its actual costs in providing a copy of a public record to the requestor. NRS 239.052.
- * **NEW in 2013** The fee for providing a copy of a public book or record in the custody of a law library operated by a governmental entity must not exceed 50 cents per page. NRS 239.052(4).
- * All county clerks are also now limited to charging no more than 50 cents per page for copies of court records. (Previously, the limit was \$1 per page.) See AB 31 (2013).

Actual Costs (NRS 239.055)

- * Providing copies of public records to the public is deemed part of the agency's regular duties. Thus, these costs generally may include only actual costs incurred in responding to the records request, such as those for toner, paper, and postage, and not employee time in responding to the request, unless the request is extraordinary.
- * ****NEW in 2013**** The fee for extraordinary use may not exceed 50 cents a page.

****NEW in 2013** No Charge for Minutes and Recordings of Meetings**

- * *Minutes of public meetings are public records.***
Minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting and ***a copy of the minutes or audio recordings must be made available to a member of the public upon request at no charge.*** NRS 241.035(2) (emphasis added).

Exception: Court Reporter Transcripts

- * The requirements of NRS 241.035(2) does not
 - * Prohibit a court reporter from charging a fee to the agency for any services relating to the transcription of a meeting; or
 - * Require a court reporter who transcribes a meeting to provide a copy of any transcript, minutes or audio recording of the meeting prepared by the court reporter to a member of the public at no charge.

Transcript Fees (NRS 239.053)

- * If a person requests a copy of a transcript of an administrative proceeding that has been transcribed by a certified court reporter, the agency shall charge, in addition to the actual cost of the medium in which the copy of the transcript is provided, a fee for each page provided which is equal in amount to the fee per page charged by the court reporter for the copy of the transcript, as set forth in the contract between the agency and the court reporter.

Transcript Fees (NRS 239.053)

- * For each page provided, the governmental entity shall remit to the court reporter who transcribed the proceeding an amount equal to the fee per page set forth in the contract between the governmental entity and the court reporter.

List of Fees

- * The agency **must** prepare and maintain a list of its fees for providing public records, which should be posted in a **conspicuous** place in **each** of its offices. NRS 239.052(3).
 - * **Best Practice:** *Also post the list on your agency website also along with your public records request form.*
 - * In lieu of posting the list of fees for providing public records request, the agency may post the location at which a list of each fee that the agency charges to provide a copy of a public record may be obtained.
- * The agency's list of fees must also include per page fee for court reporter transcripts. NRS 239.053(2).

Waiving Fees

- * Should an agency wish to waive a portion or all of its fee for providing records, the agency must adopt a written policy and post notice of this policy in a **conspicuous** place in each of its offices. NRS 239.052(2).
- * Waiving of fees must be fair and consistent and done according to written policy.

Policy and Procedure

- * **Best Practice:** Develop a public records policy now delineating the agency's policy and procedure related to the handling of public records requests, including the fees charged for records requests and any fee waiver policy.

Risks of Non-Disclosure

- * If a state agency decides not to disclose requested records and the issue is litigated and the agency loses, the requestor is entitled to recover costs and reasonable attorney's fees in pursuing the court action. NRS 239.011.
- * It is important that the agency and its decision maker(s) recognize that an incorrect decision to withhold requested records may be costly.
 - * **Best Practice:** Not all requested records should be released. It is important to ensure that the agency and its decision maker(s) understand that there are potential risks in denying a records request and such requests should not be denied arbitrarily or without careful consideration and a solid legal position supporting the denial.

Good Faith Immunity

- * The NPRA provides immunity from damages for disclosure or refusal to disclose information as long as the public officer or employee is acting in good faith. NRS 239.012.
- * If the agency and its decision maker discloses or fails to disclose requested information in “good faith,” even if the decision is later found to be incorrect, the agency and the decision maker(s) are immune from liability for damages incurred by either the requestor or the person whom the information concerns.

Good Faith Immunity: It is For the Public Officer or Employee!

- * To receive this good faith immunity, the agency itself, **not legal counsel**, should make the decision regarding the disclosure of information.

Judicial Review in State District Court

- * Pursuant to NRS 239.011, if a public records request is denied by the agency, the requestor may apply to the district court in the county where the book or record is located for an order:
 - * Permitting the requestor to inspect or copy the book or record; or
 - * Requiring the agency who has legal custody or control of the public book or record to provide a copy to the requestor.

Judicial Review (cont.)

- * This matter is given priority over other civil matters to which priority is not given by other statutes.
- * If the requester prevails, he or she is entitled to his or her costs and reasonable attorney's fees from the governmental entity having custody of the book or record.
- * A writ of mandamus is the proper remedy to compel the disclosure of public records. *See DR Partners*, 116 Nev. 616, 6 P.3d 465 (2000).

Burden on Judicial Review

- * NRS 239.0113: If the confidentiality of a public book or record is at issue in a judicial or administrative proceeding and the governmental entity that has legal custody of the public book or record asserts that the public book or record is confidential, *the government agency has the burden of proving by a preponderance of the evidence that the book or record, or a part thereof, is confidential.*
 - * Applies in administrative proceedings, if both elements of the statute are met.
 - * Burden is only on the governmental entity, and this burden is a preponderance of the evidence.

The 30-Year Rule

- * NRS 239.0115: If the record has been in the legal custody or control of one or more governmental entities for more than thirty (30) years, and, if the record is not otherwise declared confidential by law, a person may apply to the district court for an order allowing inspection or copying of the public book or record.
- * There is a rebuttable presumption that the person who applies for such an order is entitled to inspect or copy the public book or record.
- * As a practical matter, this likely would occur after a requester has been denied his or her request to inspect or copy the public book or record, but the statutes does not require that this be the case.

The 30-Year Rule (cont.)

- * **Natural Person Exception:** If the public book or record pertains to a natural person, a person may not apply for such an order until either (1) the person's death or (2) the passing of thirty (30) years of governmental legal custody or control of the public book or record, whichever is later.
- * **Other Exceptions:**
 - * Any record declared confidential pursuant to NRS 463.120.
 - * Any record containing personal information pertaining to a victim of a crime that has been declared by law to be confidential.
 - * Any provision of law that has declared the public book or record, or a part thereof, to be confidential. See NRS 239.0115(1).

SB74 (2013)

- * The agency shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself. NRS 239.010(4)(b).

AB31 (2013)

- * The head of each agency of the Executive Department shall designate one or more employees of the agency to act as records official for the agency.
- * The records official shall carry out the duties imposed pursuant to NRS 239 and NAC 239 with respect to a request to inspect or copy a public book or record of the agency.

Agency of the Executive Department Defined

- * Agency of the Executive Department means “an agency, board, commission, bureau, council, department, division, authority or other unit of the Executive Department of the State Government. The term does not include the Nevada System of Higher Education. NRS 239.005.

AB31 (2013)

- * The State Library and Archives Administrator, in cooperation with the Attorney General, shall prescribe:
 - * The form for a request by a person to inspect or copy a public book or record of an agency;
 - * The form for written notice required to be provided by an agency pursuant to NRS 239.0107(1);
 - * By regulation, the procedures with which a records official must comply in carrying out his or her duties.

2019 Session Public Records Bills

- * AB371: Requires the NDOC and local governments to provide a report to LCB regarding specified items.
 - * <https://www.leg.state.nv.us/Session/80th2019/Reports/history.cfm?DocumentType=1&BillNo=371>
- * SB287: Makes many changes to NRS Chapter 239, including adding a definition of public record. Removes the ability to charge for extraordinary use for requests defined as “extraordinary” in the agency/local government policy. Updates legal custody to “possession and custody.”
 - * <https://www.leg.state.nv.us/Session/80th2019/Reports/history.cfm?DocumentType=2&BillNo=287>
- * SB388: Requires state government agencies to create list of confidential records and/or a list of records with information that must be redacted and to provide that list to LCB. Allow requesters to seek access to confidential records by proving that he/she has a “compelling interest” in access.
 - * <https://www.leg.state.nv.us/Session/80th2019/Reports/history.cfm?DocumentType=2&BillNo=388>

Forms and Procedures

- * Each agency of the Executive Department **shall** make available on any website maintained by the agency on the Internet or its successor the forms and procedures prescribed by the State Library and Archives Administrator and the Attorney General. AB31 (2013).
- * Go to: nsla.nv.gov and click on “Public Records” on the top bar.

Public Records and Subpoenas

- * Subpoenas for records are treated in a similar manner to records requests by governmental entities.
- * Absent a court order, confidential information is not required to be released under a subpoena. See NRCP 45(c)(3)(B). Pursuant to a court order, it may be required only upon specific conditions. *Id.*
- * When withholding confidential records, government entity responses to subpoenas for records are much like responses to public records requests.
 - * “[T]he claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.” NRCP 45(d)(2). Compare *Gibbons*, 266 P.3d 623, 127 Nev. Adv. Op. 79.

Library Records

- * NRS 239.013: Any records of a public library or other library which contain the identity of a user and the books, documents, films, recordings or other property of the library which were used are confidential and not public books or records as defined in NRS 239.010. These records may *only* be released upon a Court order after a finding that the disclosure of such information is necessary to protect the public safety or to prosecute a crime.

Questions??